

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.4011 OF 2014

New Delhi, this the 22nd day of December, 2015

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Anil Agnihotri,
s/o late Prakash Chander Sharma,
R/o: B-69, Cosy Apartment,
Sector 9, Rohini, Delhi 110085 í í Applicant

(By Advocate: Mr.B.S.Rajesh)

Vs.

1. North Delhi Municipal Corporation,
through Commissioner,
Dr.S.P.M.Civic Centre,
Jawahar Lal Nehru Marg,
New Delhi 110002
2. Deputy Commissioner,
Rohini Zone,North Delhi Municipal Corporation,
Rohini Zone, Sector 5,
Rohini, Delhi 110085 í í Respondents

(By Advocate: Mr.R.K.Jain)

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ORDER

The brief facts of the applicant's case are that while working as Dy. Assessor & Collector with the North Delhi Municipal Corporation, he retired from service on attaining the age of superannuation on **28.2.2014**. As the retirement benefits were not released in his favour, the applicant made representations on 3.3.2014 and 2.4.2014 requesting the respondents to

release the same without any delay. Though the GPF, leave encashment, and provisional pension were released by the respondents on 4.4.2014, yet the final pension, commuted value of pension, and gratuity were not released in his favour. His representations having yielded no response from the respondents, the applicant filed OA No.1618 of 2014 praying for issuance of a direction to the respondents to release all his retirement benefits. The Tribunal, vide its order dated 12.5.2014 (Annexure A/6), disposed of OA No.1618 of 2014, after recording the submission of the learned counsel appearing for the respondents that a decision would be taken on the applicant's representations within eight weeks from the date of receipt of a copy of the order dated 12.5.2014, *ibid*. The applicant's representations were disposed of by Respondent no.2, vide order dated 5.9.2014 (Annexure A/7), the relevant portion of which is extracted below:

Whereas, consequent upon attaining the age of superannuation, Shri Anil Agnihotri was due for retirement on 28.02.2014. As per provisions/rules, he is eligible to get the following terminal benefits, subject to clearance of No Dues Certificate from various departments and clearance from the Vigilance Department:-

- (1) Pension
- (2) Retirement Gratuity
- (3) Commutation of Pension
- (4) Encashment of Earned Leave
- (5) GPF

Whereas, as informed by the Junior Law Officer, Vigilance Department, NDMC, vide letter No.JLO/V.S/2013/5637 dated 18.12.2013 and also admitted by him, Shri Anil Agnihotri is facing RDA bearing No.1/34/11.

Whereas, since departmental proceedings are still pending against him, Pension is to be fixed provisionally under

Sub Rule 4 of Rule 9 of the CCS Pension Rules read with Sub Rule (2) of Rule 69. Accordingly, his pension was fixed provisionally @ 15645/- p.m.

Whereas, Pension and Commutation of Pension are linked with each other, commutation of Pension is to be released after the pension is fixed finally, under Rules.

Whereas, a sum of Rs.6,18,502/- has been released on account of Leave Encashment and nothing is pending in this regard.

Whereas, a sum of Rs.15,82,422/- on account of GPF has been released to him.

Whereas, all the representations filed by Shri Anil Agnihotri have been duly examined on merit along with OM No.F.22034/4/2012-Estt. (D) dated 2.11.2012, quoted by him. The OM referred to above is applicable for promotion and not on release of terminal benefits whose against departmental proceedings are pending. Terminal Benefits are to be released as per provisions of Sub Rule 4 of Rule 9 read with Rule 69 of CCS Pension Rules, irrespective of the fact that charge sheet is issued or not.

Whereas, under sub rule (c) of Rule 69 of CCS Pension Rules, no Gratuity shall be paid to the Government Servant until the conclusion of the departmental or judicial proceedings and issue of final orders therein. Accordingly, Retirement Gratuity will be liable to be released after grant of Vigilance Clearance report from the Vigilance Department.

Hence, the applicant has filed the present O.A. seeking the following reliefs:

- 8.1 Direct the respondents to forthwith release the applicant's regular pension with effect from 01.03.2014;
- 8.2 Direct the respondents to grant the applicant the commuted value of pension in accordance with law;
- 8.3 Direct the respondents to forthwith release the applicant's gratuity; and
- 8.4 Direct the Respondents to grant the applicant interest @ 24% per annum (Compounded annually) on the commuted value of pension and retirement gratuity calculated w.e.f. 01.03.2014 till the settlement of the same.

- 8.5 He may be awarded interest @ 24% on leave encashment amount, which was released to him on 04.04.2014 by delay of 34 days.
- 8.5 Costs of the proceedings be allowed.
- 8.6 Any other order(s) as deemed fit and proper by this Honøble Tribunal, considering the facts and circumstances of the present case.ö

1.1 It has been asserted by the applicant that by the date of his retirement, i.e., 28.2.2014, no charge sheet was issued to him in RDA Case No.1/34/11. As no departmental proceedings, or judicial proceedings, could be said to be instituted, or pending, against him on the date of his retirement, in terms of Rules 9 and 69 of the CCS (Pension) Rules, 1972, the non-payment of final pension, and commuted value of pension, to him, and the withholding of payment of his retirement gratuity are unsustainable, and the respondents are liable to be directed to make payment of the said retirement benefits, together with the interest thereon from the date when the payment of the same became due till the date of actual payment. It has also been asserted by the applicant that the respondents have released all the retirement benefits in favour of several other officers who were involved in the RDA Case, and, therefore, the non-release of full retirement benefits in his favour is discriminatory.

2. Resisting the applicant's claim, the respondents have filed their counter reply. It is, *inter alia*, stated by the respondents that under the provisions of Rule 69 of the CCS (Pension) Rules, 1972, the payment of gratuity has been withheld, and regular pension, along with its commutation,

has not been fixed, as per the applicant's entitlement, due to pending disciplinary proceedings for major penalty, initiated vide RDA Case No.1/34/11, and judicial proceedings in RC-DAI-2008-A-0002/10887 initiated by the CBI before the competent court. It has further been asserted by the respondents that on the basis of a written report dated 1.1.2008 submitted by ASP, CBI, ACB, New Delhi, who enquired into the complaint received from Director (Delhi), MHA, North Block, New Delhi (registered as PE.DAI-2006-A-0020) regarding irregularities in the process of appointment (by way of absorption) of Shri G.S.Matharoo as Secretary to the Commissioner, MCD, a criminal case under Section 120B read with Sections 420, 468 and 471 of the Indian Penal Code, and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, RC-DAI-2008-A-0002/10887 was initiated against the applicant and others. After investigation, the CBI filed a closure report dated 30.6.2009 before the learned Special Judge (CBI), concluding that even though there were illegalities, irregularities, and obliteration in the service record of the said Shri Matharoo, but sufficient evidence as regards the maker of the obliteration could not be gathered during investigation. However, the S.P., CBI, submitted a report dated 24.8.2009 recommending, *inter alia*, that departmental action, as deemed fit, be taken against the applicant and another for their having wrongly processed the matter of absorption of the said Shri Matharoo. Accordingly, the file was placed before the Commissioner, MCD. The Commissioner, MCD, vide order dated

17.2.2011, approved initiation of major penalty proceedings against the applicant and others. The MCD decided to file a protest petition before the Court against the final/closure report of the CBI, and the matter is still pending. Thereafter, the file was again placed before the Commissioner to consider and pass orders to keep the RDA Case No.1/34/11 in abeyance till the decision of the CBI Court on the closure report filed by the CBI and the protest petition filed by the MCD. Under the orders of the Commissioner, MCD, the further proceeding in RDA Case No.1/34/11, pending against the applicant and others, has been kept in abeyance till the decision of the CBI Court. Referring to Rule 9(6) of the CCS (Pension) Rules, 1972, the respondents have stated that the judicial proceedings and departmental proceedings are pending against the applicant and, therefore, the final pension together with commutation of pension, and gratuity have not been released in his favour.

3. In his rejoinder reply, the applicant, while controverting the stand taken by the respondents, has reiterated more or less the same averments and contentions as in his O.A. Along with his rejoinder reply, the applicant has also filed a copy of the circular dated 4.5.1994 issued by the Director of Vigilance, MCD, stating, *inter alia*, that RDA case should reckon from the date of issue of charge sheet. The applicant has also filed Memorandums dated 7.8.2012 and 17.12.2014 issued by the Junior Law Officer stating that as per record, there is no RDA/Police Case pending against the applicant.

4. I have carefully perused the records, and have heard Shri B.S.Rajesh, learned counsel appearing for the applicant, and Shri R.K.Jain, learned counsel appearing for the respondents.

5. The only point, which arises for consideration in this case, is whether departmental proceedings and judicial proceedings were instituted/ pending against the applicant on the date of his retirement on superannuation on 28.2.2014, and the respondents were justified in not making payment of final pension, and commutation of pension, to the applicant, and in withholding payment of gratuity of the applicant.

6. For deciding the point in issue, it would be apposite to refer to the relevant provisions of Rule 9 and Rule 69 of the CCS (Pension) Rules, 1972.

6.1 Rule 9(4)&(6) of the CCS (Pension) Rules, 1972 reads thus:

9(4). In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.

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(6) For the purpose of this rule 6

- (a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

- (b) judicial proceedings shall be deemed to be instituted if
 - (i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made, and
 - (ii) in the case of civil proceedings, on the date the plaint is presented in the Court.

6.2

Rule 69 of the CCS (Pension) Rules, 1972, reads thus:

69. Provisional pension where departmental or judicial proceedings may be pending.

(1) (a) In respect of a Government servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the Competent Authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:

Provided where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the said rules, the

payment of gratuity shall be authorized to be paid to the Government servant.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

7. Under Rule 9(6)(b)(i) of the CCS (Pension) Rules, 1972, criminal proceedings shall be deemed to be instituted against a Government servant on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made. Undoubtedly, a report of a Police Officer, referred to in Rule 9(6)(b)(i) *ibid*, of which the Magistrate takes cognizance, is the report of the Police Officer under Section 173(2) of the Code of Criminal Procedure, 1973, made to the Magistrate. The said report is commonly known as a charge sheet. In the instant case, admittedly, the CBI registered the FIR and/or the criminal case against the applicant and others in the year 2008 and did not submit charge sheet/report under Section 173(2) of the Code of Criminal Procedure, 1973, against any of the persons, including the applicant, before the competent court. It is also the admitted position between the parties that a closure report was submitted by the CBI before the competent court on 30.6.2009, and a protest petition against the said closure report was filed by the respondents, and that an order is yet to be passed by the competent court thereon. As no order has yet been passed by the competent court on the said closure report and protest petition, and

as no re-investigation, or further investigation, has been ordered by the competent court, and the CBI has not yet submitted the charge sheet against the applicant in the criminal case, it cannot be said that the criminal proceedings were instituted or pending against the applicant on the date of his retirement, i.e., 28.2.2014, merely because a protest petition against the closure report was filed by the respondents in the criminal case before the competent court by the date of retirement of the applicant.

7.1 Under Rule 9(6)(a) of the CCS (Pension) Rules, 1972 departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant, or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date. It has been clearly admitted by the respondents that the further proceeding in the RDA Case No.1/34/11, initiated against the applicant and another, has been kept in abeyance, and no statement of charges/charge sheet has yet been issued to the applicant by the date of his retirement, i.e., 28.2.2014. Therefore, it cannot be said that departmental proceedings were pending against the applicant on the date of his retirement, i.e., 28.2.2014.

7.2 From the foregoing, it is clear that no judicial proceedings or departmental proceedings were instituted/pending against the applicant on the date of his retirement, i.e., 28.2.2014, and, therefore, the provisions of Rules 9(4) and 69 of the CCS (Pension) Rules, 1972, as regards payment of provisional pension, and withholding of payment of gratuity, are not

attracted in the case of the applicant. Thus, I am of the considered view that the respondents acted unjustifiably in not making payment of final pension and commuted value of pension to the applicant, and in withholding of payment of gratuity of the applicant.

8. In the light of what has been discussed above, I direct the respondents to make payment of the final pension, commuted value of pension, and gratuity to the applicant within a period of three months from today. On the facts and in the circumstances of the case, it cannot be said that the respondents deliberately withheld the family pension, commuted value of pension, and gratuity payable to the applicant. Therefore, I am not inclined to direct the respondents to pay interest on the said retirement benefits. But it is directed that if the respondents fail to make payment of the aforesaid retirement dues to the applicant within three months from today, they shall be liable to pay interest thereon at GPF interest rate from 1.3.2014, i.e., the date following the date of retirement of the applicant, till the date of actual payment.

9. In the result, the O.A. is partly allowed to the extent indicated above. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER